IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13227 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DANJIBHAI BABALBHAI

Versus

SAYNIBEN D/O.BHIKHARBHAI SAVJIBHAI

Appearance:

1. Special Civil Application No. 13227 of 2004

MR NL PATEL for Petitioner No. 1

MR JS YADAV for Respondent No. 1

MR SHIVANG J SHUKLA for Respondent No. 1

Mr. Nagesh Sood, AGP for Respondent No. 2-3,5

RULE SERVED for Respondent No. 2

NOTICE SERVED for Respondent No. 3,4,6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/02/2005

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 4.8.2004 in Revision Applications No. 25/1999 and 26/1999 in dismissing the same and confirming the orders passed by the Collector, Valsad, dated 22.9.1999 in RTS Revision Application No. 56 of 1998 and RTS Revision Application No. 57 of 1998 in respect to the revenue entry No. 363 with regard to the land in question.

3. Being aggrieved and dissatisfied with the Entry No. 363 dated 11.8.1996 by which name of the petitioner came to be entered into in the Record of Rights along with respondent No.1. The respondent No.1 preferred RTS Appeal No. 57/97 before the Deputy Collector, Valsad, under Rule 108(5) of the Gujarat Land Revenue Rules. The Deputy Collector, Valsad, by order dated 13th October 1998 partly allowed the said appeal confirming the Entry No.2 dated 18.8.1949 and Entry No.363 dated 11.8.1996 and further passed an order to mutate the name of respondent with regard to the properties in respect to Katha No.31. It appears that another Revision Application No. 68/97 was filed by the petitioner which came to be filed by the Deputy Collector, Valsad, by order dated 13th October 1998 in view of the order passed in Appeal No. 67/97. Being aggrieved and dissatisfied with the aforesaid two orders, the petitioner preferred two separate Revision Applications No. 56/1998 and 57/1998 before the Collector, Valsad. The Collector, Valsad by two orders both dated 22.9.1999 filed the Revision Application No. 56 of 1998 on the ground that with regard to Entry No. 363 itself there was another Revision Application bearing No. 57/1998 was pending before the Collector, Valsad and by the other order dated 22.9.1999 the Collector dismissed the said revision application confirming the order passed by the Deputy Collector, Vadodara, dated 13th October 1998 confirming the Entry No. 363 dated 11.8.1986 and directing to mutate the name of the respondent with respect to the lands relating to Katha No. 31. Being aggrieved and dissatisfied with the aforesaid two orders passed by the Collector, Vadodara, dated 22nd September 1999 in Revision Application No. 56 of 1998 as well as Revision Application No. 57 of 1998, the petitioner preferred two Revision Applications before the Secretary (Appeals), Revenue Department, being Revision Applications No. 25/1999 and 26/1999, which came to be disposed by a common judgment and order dated 4.8.2004 dismissing both the revision applications by the Secretary (Appeals), Revenue Department, which has given rise to the present Special Civil Application under

Article 226/227 of the Constitution of India.

4. As such, the petitioners are required to file two petitions, however, in view of the fact that both the revision applications which came to be disposed of by common order were with regard to same Entry No. 363, the Special Civil Application is disposed of by dealing with both the revision applications with regard to a common entry.

5. Shri NL Patel, learned advocate appearing on behalf of the petitioners has submitted that while exercising the RTS proceedings, the Revenue Authority could not have gone into the dispute with regard to title and could not have decided whether there was a partition or not and/or the petitioners and/or the respondent No.1 has any right, title or interest in the land in question or not. Relying upon the decision of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113 it is submitted that though the very authority might be having jurisdiction he has no jurisdiction to go into the question with regard to title and if there is any dispute regarding right, title, the parties are relegated to the Civil Court for the purpose of crystallizing their rights. Therefore he has requested to allow the present Special Civil Application.

6. Shri JS Jadav, learned advocate appearing on behalf of respondent No.1 has submitted that the judgment and order passed by the authorities below are just and proper and considering the fact that the respondent No.1 has some right, title or interest in the land in question and/or other lands the order came to be passed mutating the name of respondent No.1 along with the petitioners by way of succession and therefore it is submitted that it cannot be said that there is any illegality committed by any of the authorities below.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the authorities below were exercising the powers under the provisions of the Gujarat Land Revenue Rules which are popularly known as RTS proceedings. The dispute was with regard to the entry in question. As held by the Hon'ble Supreme Court of India as well as this Court in catena of judgments, entries made in the revenue records have primarily a fiscal value and they do not create right, title, or interest and such entries are made for the purpose of recovering revenue from the person who is in

possession and/or in occupation of the land in question. If there is any dispute with regard to title, then the parties are required to be relegated to approach the Civil Court for the purpose of crystallizing their rights. Under the circumstances, the orders passed by the authorities below are modified to the extent that the entry made in question shall be subject to ultimate outcome of the civil suit that may be filed by the parties, and if there is any dispute with regard to title, the parties are relegated to move appropriate Civil Court for the purpose of crystallizing their rights and on finalisation of the same necessary Entry will be made by the revenue authorities on the basis of the judgment and decree that may be passed by the Civil Court. However, as stated above, the entry itself does not create any right, title or interest in favour of any party in whose favour the entry is made. With these observations and direction, the present Special Civil Application is disposed of.

8. At this stage, Shri JS Jadav, learned advocate appearing on behalf of respondent No.1 has submitted that for the purpose of crystallizing his rights, the respondent No.1 is to file a suit before the Civil Court and therefore for some time the order of status-quo granted by this Court is required to be continued. In the facts and circumstances of the case, the order of status-quo granted by this Court is directed to be continued for a period of six weeks from today to enable the parties to obtain appropriate order with regard to interim relief from the Civil Court. The Civil Court may consider the question with regard to interim relief in accordance with law and on merits without in any way influenced this this Court has granted order of status-quo by this order. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R. Shah, J.]

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